



WHS Active Certification Policy

Version: June 2016

WHS Active Certification Policy

1. Objective of Policy

- 1.1. Work health and safety (WHS) is a priority for the ACT Government. Its importance is part of our culture.
- 1.2. This Policy was developed as part of the ACT Government's overall WHS response to the "Getting Home Safely" report. It was one of a number of measures introduced by the Territory to improve WHS outcomes and practices on Territory Construction Projects.
- 1.3. The aim of the Policy is to drive a process of cultural change to improve safety on building sites. It does this by employing regular audits and a points demerit system aimed at ensuring that safe working systems are developed and rigorously implemented.
- 1.4. The Policy provides a process for the auditing of Prequalified Contractors' WHS management systems (including the implementation of WHS Management Plans) at various stages of Construction Projects. The primary purpose of this auditing process is to enable the Territory to rely on Auditors' findings regarding any Non-conformance as part of actively assuring itself that its Prequalified Contractors are implementing safety systems. At the end of an Audit process a Prequalified Contractor may be allocated Final Points for WHS Non-conformances identified during the Audit process. The allocation of those Points may impact on the Prequalified Contractor's prequalification status under a Prequalification Scheme.
- 1.5. Under the Policy the Territory will only prequalify construction contractors (and permit them to remain prequalified) where they demonstrate they have in place and implement systems to address work health and safety practices.

2. Scope of Policy

- 2.1 All Prequalified Contractors and entities seeking prequalification (including renewal or upgrade of prequalification) under a Prequalification Scheme are covered by this Policy.
- 2.2 The Policy supplements and informs the Prequalification Schemes. Where a Sanction against a Prequalified Contractor is to be imposed this will occur in accordance with the process set out in the relevant Prequalification Scheme under which the Prequalified Contractor is prequalified.
- 2.3 Prequalified Contractors are likely to have been given control of sites on which Construction Projects are being performed. As such is it likely they will also be given management of work health and safety matters on those sites and be appointed Principal Contractor. Given this position the Prequalified Contractor will be responsible for Other Contractors including any Non-conformance by those entities. As such any WHS Non-conformance referable or attributable to any Other Contractor will be a WHS Non-conformance of the Prequalified Contractor and may attract the allocation of Points under the Policy.

WHS Active Certification Policy

- 2.4 The Policy does not prevent the Territory from seeking to impose a Sanction (or taking such other action provided for in a Prequalification Scheme) against a Prequalified Contractor if it determines it is appropriate.
- 2.5 The Policy does not in any way relieve Prequalified Contractors of their obligations under WHS Legislation. The Policy is not intended to replace the WHS Legislation and the regulatory framework in the Territory for enforcement of the WHS Legislation. Prequalified Contractors (along with any Other Contractors on Construction Projects) will be required to comply with all legislative obligations, which include licensing obligations, reporting obligations under WHS Legislation, and compliance with any notices issued under the WHS Legislation by any regulatory entity including WorkSafe ACT.
- 2.6 Any Audit process conducted in accordance with this Policy will have no bearing on the findings or the decisions of a WorkSafe ACT inspector or other regulatory agency or body responsible for regulating or enforcing WHS Legislation.
- 2.7 The Territory may refer any work health and safety matters to a regulatory agency or body responsible for regulating or enforcing WHS Legislation at any time, irrespective of whether it is, or has been, the subject of an Audit process provided for by the Policy.
- 2.8 The Policy does not in any way relieve Prequalified Contractors (along with any Other Contractors working on Construction Projects) of their contractual obligations under a contract with the Territory or any contractor engaged by the Territory.

3 Implementation of Policy

- 3.1 From and including 1 July 2013 the auditing process set out in the Policy was implemented on all Construction Projects where a contract was entered into on or after that date.
- 3.2 The Territory may, at its discretion, choose to Audit any of its Construction Projects which were the subject of a contract entered into before 1 July 2013.
- 3.3 Where any Audit was conducted in respect of a Construction Project from 1 July to 30 November 2013, any Points incurred in respect of those Audits were not allocated to a Prequalified Contractor.
- 3.4 The failure to allocate Points against the Prequalified Contractor (during the bedding down period or otherwise) will in no way restrict the Territory from taking any action against the Prequalified Contractor in accordance with the relevant contract; the Prequalification Scheme or the law.
- 3.5 From and including 1 December 2013 the following process applies.

First Initial Audit

- 3.6 The following applies in respect of the first Initial Audit conducted in respect of a Prequalified Contractor on or after 1 December 2013 (the **First Initial Audit**). Subject to section 3.7, no Points will be allocated referable to any First Initial Audit or Follow Up

WHS Active Certification Policy

Audit following the First Initial Audit (as varied by Points allocated as a result of any referable Close Out Audit).

- 3.7 Where as part of the Close Out Audit referable to the First Initial Audit (or a referable Follow Up Audit) it is established that the Prequalified Contractor has failed to rectify or mitigate one or more of the WHS Non-conformances identified in the First Initial Audit or referable Follow Up Audit, Points will be allocated to the Prequalified Contractor for those matters which have not been rectified or mitigated to the satisfaction of Procurement and Capital Works. Those Points will be allocated in accordance with Section 8 of this Policy.

Subsequent Initial Audits

- 3.8 Any Points allocated referable to any Initial Audit or Follow Up Audit (as varied by Points allocated as a result of any Close Out Audit) following the First Initial Audit (or any referable Follow Up Audit) will be allocated to a Prequalified Contractor.

4 Purpose and timing of Audits

- 4.1 The primary purpose of the audit process will be to conduct point in time Audits of Prequalified Contractors' work health and safety management systems to check they are implementing them on Construction Projects.
- 4.2 The Territory may choose to conduct an Audit of a Prequalified Contractor in accordance with this Policy at any time during which Construction Work is being performed as part of the Construction Project (clause 4.3 provides further guidance on the timing of Audits) . The audit process may be activated for any reason, including:
- 1) a notice being issued by WorkSafe ACT in respect of the Construction Project;
 - 2) a notifiable incident (as defined in the WHS Legislation) occurring referable to a Construction Project;
 - 3) the Territory being dissatisfied with the work health and safety performance of the Prequalified Contractor;
 - 4) the Construction Project including high risk Construction Work; or
 - 5) the conduct of a Cyclical Audit.

Cyclical Audits

- 4.3 From and including 1 July 2013 the Territory introduced a program of Cyclical Audits. The Cyclical Audits are conducted on all Construction Projects where contracts have been entered into from and including 1 July 2013 with a term of 13 weeks or greater. In determining when and whether Cyclical Audits will be conducted the Territory may have regard to any of the following.
- 1) The period during which there is physical construction activity on a site.
 - 2) Whether the Prequalified Contractor has been the subject of recent Audits on other sites.

- 3) The results of previous Audits of the Prequalified Contractor for a particular Construction Project.
- 4) Whether it is appropriate to conduct consolidated Audits for multiple sites.
- 5) The time period between Audits of a Prequalified Contractor on any site.
- 6) The nature and delivery of the Construction Work including whether the work comprises a Multi Site Construction Project.

Further details in relation to these considerations are set out in the following sections.

The period during which there is physical construction activity on a site

- 4.4 It is during the period where there is physical construction activity on a site that an Auditor will most effectively be able to audit the Prequalified Contractor's WHS management systems. That period is likely to commence some time after the parties have entered into a contract and be evidenced by the granting of physical possession of a site or possibly the commencement of construction works. It will be at the Territory's discretion as to when any particular 13 week period for a Cyclical Audit commences and at what point in that period an Audit will be conducted. Further the Territory may, at its discretion, waive a proposed Audit during a 13 week period if there is no further proposed construction activity on a site, for example, if the Prequalified Contractor completed work on site ahead of the proposed date for practical completion and has handed over the site or has otherwise vacated the site.

Whether the Prequalified Contractor has been the subject of recent Audits on other sites

- 4.5 The Territory may, at its discretion, waive the requirement for one or more Cyclical Audits of a Prequalified Contractor where that Prequalified Contractor has been the subject of a recent Audit on another Territory site and that Audit has not given rise to a finding of any Non-conformance.

The results of previous Audits of the Prequalified Contractor for a particular Construction Project

- 4.6 Where a Prequalified Contractor has been the subject of two consecutive Cyclical Audits of the same Construction Project which have not given rise to a finding of any Non-conformance, then the Territory may, at its discretion, waive the next scheduled Cyclical Audit for that Prequalified Contractor on that site.

Consolidated Audit for multiple sites

- 4.7 There may be instances where a Prequalified Contractor is undertaking a number of Construction Projects for the Territory that result in the Prequalified Contractor having control of multiple sites at the same time. If there have been no Non-conformances

identified over two consecutive Audits at any one of those sites, then the Territory may decide that the next scheduled Audit will be a single consolidated audit that covers some or all of the Prequalified Contractor's sites. This consolidated audit may focus on a specific WHS matter across all referable sites, or will nominate one site to Audit and attribute the results of that Audit across all referable sites. How the consolidated audit will be conducted will be determined by Procurement and Capital Works.

4.8 There are two exceptions to the use of a consolidated audit.

- (1) Any site that has been the subject of any Non-conformances will continue to be audited separately and will not be the subject of a consolidated audit; and
- (2) Any new Construction Project will always be the subject of at least one site specific audit process in the first instance.

The time period between Audits of a Prequalified Contractor on any Site

4.9 In cases where a Prequalified Contractor has received a finding of a Non-conformance from a Cyclical Audit, the Territory may, at its discretion, postpone the next scheduled Cyclical Audit (for a period of time reasonably determined by the Territory but not exceeding 4 weeks) on a different site controlled by the Prequalified Contractor in order to allow systems to be implemented to avoid future findings of non-conformances.

The nature and delivery of the Construction Work including whether the work comprises a Multi Site Construction Project

4.10 The Territory may, at its discretion, have regard to the nature and delivery of the Construction Work in determining when and whether an Audit should be conducted. Where a project is a Multi Site Construction Project the Territory may elect to modify the Cyclical Audit regime, for example, by providing for a longer period than every 13 weeks within which an Audit is to be conducted. By way of example a road marking project will not have a single established site and may be the subject of intermittent activity over an extended period. In those circumstances the Territory may, at its discretion, nominate the date for any Audit and the frequency within which Audits are conducted for these types of Construction Projects.

4.11 Subject to section 4.3, the Cyclical Audit program will provide for an Initial Audit to be conducted at a date to be determined by the Territory in conjunction with the Auditor during each 13 week period of the contract. For example, where a Construction Project has a proposed term of 30 weeks and site access is given in week 1, the Construction Project will be subject to 2 Cyclical Audits with the first to be commenced by way of an Initial Audit at any time between weeks 1 and 13 and the second commenced at any time between weeks 14 and 26 of the contract.

4.12 Prior to the commencement of an Initial Audit as part of the Cyclical Audit program the Prequalified Contractor will be advised of a five (5) Business day period in which the

WHS Active Certification Policy

Initial Audit may be conducted. Following conduct of the Initial Audit the audit process as set out in Part 6 of this Policy will be followed.

- 4.13 The Territory will pay the Auditor's costs for any Initial Audit (conducted as part of the Cyclical Audit program or otherwise) from the project budget. The Prequalified Contractor will pay to the Territory by way of reimbursement the Auditor's costs associated with the conduct of any Follow Up Audit (required as a result of the action or inaction of the Prequalified Contractor) or Close Out Audit. These costs will be paid to the Territory by way of a deduction against one or more payment claims of the Prequalified Contractor (at the discretion of the Territory) under the referable contract. If the Auditor's costs associated with the conduct of any Follow Up Audit or Close Out Audit are not paid to the Territory in that manner they will become a debt due and payable by the Prequalified Contractor to the Territory and will be recoverable by the Territory.
- 4.14 The Territory may choose to introduce a Cyclical Audit program on contracts for Construction Projects which were entered prior to 1 July 2013 as part of complying with duties and due diligence obligations under the WHS Legislation. Where it does so it will, as far as practicable, conduct those Cyclical Audits having regard to the timing of Cyclical Audits and other principles as set out in this Policy. Where provision for Cyclical Audits has not been incorporated into contracts, the cost of the audits will be met by the Territory.

Other Initial Audits

- 4.15 The Territory may engage an Auditor to perform an Initial Audit (other than an Initial Audit as part of the Cyclical Audit process) at any time and for any reason. The cost of the Auditor for the conduct of that Initial Audit will be met by the Territory. The Territory may choose to advise the Prequalified Contractor of a period during which that Initial Audit will be conducted, having regard to the circumstances, but is not required to do so.

5 Who may conduct an Audit

- 5.1 Audits may only be conducted by Auditors. The Auditor will be selected at the absolute discretion of the Territory.
- 5.2 The Territory will establish a panel of Auditors authorised to perform Audits in accordance with the Policy.
- 5.3 The Territory will periodically review the performance and qualifications of the Auditors.
- 5.4 The Prequalified Contractor must not place itself, and must ensure, to the extent reasonably practicable, that its officers, employees and Other Contractors do not place themselves, in a position that may or does give rise to an actual, potential or perceived conflict of interest between the interests of the Territory and that of the Prequalified Contractor during the Audit process. The Prequalified Contractor must, prior to the conduct of any Audit, advise the Territory if it believes there is an actual, potential or

perceived conflict of interest as a result of the appointment or proposed appointment of an Auditor to conduct an Audit.

6 Conduct of Audits

Assistance in conduct of Audits

- 6.1 Prequalified Contractors must take all reasonable actions and comply with all reasonable requests of the Territory, the Auditor and the Superintendent or their respective authorised persons regarding the conduct of any Audit.
- 6.2 The Prequalified Contractor must, at the time advised to it for the conduct of an Audit, allow the Auditor or any person authorised by the Auditor to:
- 1) enter upon the site of the referable Construction Project to conduct the Audit; and
 - 2) enter upon the site of the referable Construction Project or any premises occupied by the Prequalified Contractor to inspect and copy any records relevant to an Audit and interview any person as part of the Audit.
- 6.3 The Prequalified Contractor must, to the extent reasonably practicable, ensure Other Contractors for the referable Construction Project comply with sections 6.1 and 6.2 as if they were the Prequalified Contractor. Template contracts and subcontract conditions approved by the Territory should be used, as they contain terms requiring Prequalified Contractors and their subcontractors to participate in any Audit process.
- 6.4 The Prequalified Contractor must ensure it is represented by a suitably qualified and authorised representative at any Audit.

Audit Process – General

- 6.5 For each Audit the Auditor will conduct an opening meeting with the authorised representatives of the Prequalified Contractor and the Superintendent to discuss the on-site inspection process to be conducted including, if applicable, any particular focus of the Audit.
- 6.6 During the on-site inspection, the Auditor will complete the relevant on-site assessment form identifying safety matters against the following responses:
- 1) compliant;
 - 2) non-compliant;
 - 3) unable to verify;
 - 4) not applicable; or
 - 5) observation/opportunity for improvement.
- 6.7 The Auditor may at any time during the Audit ask to sight and copy records or other material not held on the site of the Construction Project. The Prequalified Contractor must provide the same as soon as reasonably practicable, but in any event no later than two (2) Business days after the Auditor has requested the records or material.

WHS Active Certification Policy

- 6.8 At the conclusion of the on-site inspection, a close-out meeting will take place with the Auditor discussing the findings with the representatives of the Prequalified Contractor. If the Audit is an Initial Audit or a Follow Up Audit, the Auditor will verbally advise the representatives at the Audit of any WHS Non-conformance (including the proposed category of WHS Non-conformance). The Auditor may provide observations on matters other than WHS Non-conformances, for example, general areas for improvement which Prequalified Contractors may wish to consider.
- 6.9 Where one or more WHS Non-conformances have been noted as part of an Initial Audit or Follow Up Audit the Auditor will also advise the Prequalified Contractor of the Auditor's close out schedule including proposed date of the Close Out Audit (**Close Out Schedule**), setting out the proposed time for rectification or mitigation of each identified WHS Non-conformance. Any timeframe for rectification or mitigation will not be greater than 20 Business days following the Audit at which the WHS Non-conformance was identified.
- 6.10 Where the Auditor has identified one or more Major Non-conformances, it will verbally notify Procurement and Capital Works immediately following completion of the Audit.

Follow Up Audit

- 6.11 The Auditor may request a Follow Up Audit (or Audits) following an Initial Audit or failed Initial Audit, for whatever reason. Reasons for a Follow Up Audit may include insufficient time to complete an Initial Audit, suspension of an Initial Audit due to identification of WHS issue(s), non-provision of information necessary to complete an Initial Audit, or identification of a WHS Non-conformance which the Auditor believes should be rectified in a short timeframe.

Report to Procurement and Capital Works

- 6.12 Within five (5) Business days of an Initial Audit (or Follow Up Audit, if applicable) the Auditor will provide to Procurement and Capital Works an interim report (with a copy to the Prequalified Contractor and the Superintendent) outlining the findings of the Audit, including the identification of any WHS Non-conformances and their proposed categorisation and the close out schedule.
- 6.13 Upon receipt of the Auditor's report Procurement and Capital Works will review the report. In particular Procurement and Capital Works will review any identified WHS Non-conformance and may upgrade or downgrade the level of the WHS Non-conformance (or disregard the WHS Non-conformance) identified by the Auditor, having regard to the need for consistent implementation of the Policy. Following its review Procurement and Capital Works will, where there is one or more outstanding WHS Non-conformance(s), allocate Initial Points to each WHS Non-conformance and advise the Prequalified Contractor and the Auditor of their decision. Where, following that review, there are no outstanding WHS Non-conformances, any proposed Close Out

WHS Active Certification Policy

Audit will not be required. Where there remain one or more WHS Non-conformances, the Close Out Audit will proceed as proposed in the Close Out Schedule.

6.14 Prior to a Close Out Audit being conducted, or any further audit of the same site, the Prequalified Contractor will be given a period of time to rectify any WHS Non-conformances outlined in the report from the Initial Audit and/or Follow Up Audit(s). The time provided to the Prequalified Contractor to rectify those WHS Non-conformances will depend on the nature of the Non-conformance, and will be subject to the following guidance on timeframes:

- (1) two weeks between audits for Major WHS Non-compliances; or
- (2) four weeks between audits for all Moderate or Minor WHS Non-compliances.

6.15 Timeframes set out above start from the date the results of the Audit are notified to the Prequalified Contractor.

Close Out Audit

6.16 A Close Out Audit will be required if there are any outstanding WHS Non-conformances identified by Procurement and Capital Works following its review of the report provided by the Auditor following the Initial Audit and/or Follow Up Audit(s). The purpose of the Close Out Audit is for the Auditor to check if the Prequalified Contractor has rectified/mitigated WHS Non-conformances previously identified and as agreed or varied by Procurement and Capital Works.

6.17 The Auditor will provide Procurement and Capital Works with a final written report (with a copy to the Prequalified Contractor and the Superintendent) within two (2) Business days of the Close Out Audit. In the close out report the Auditor will advise if the Prequalified Contractor has successfully rectified or mitigated each outstanding WHS Non-conformance. Procurement and Capital Works will consider that report in determining what Final Points will be allocated to the Prequalified Contractor in accordance with, and having regard to consistent implementation of, the Policy.

6.18 Procurement and Capital Works will provide written notification to the Prequalified Contractor of the Final Points allocated to the Prequalified Contractor following completion an Audit process. That notification will include an update on the current number of Final Points allocated to the Prequalified Contractor.

Suspension of Audit

6.19 The Auditor may, at any time upon reasonable grounds, suspend an Audit. Those grounds may include concerns for their own safety or the safety of others on the site of the Construction Project. The Auditor may take such action as is necessary to comply with their obligations under WHS Legislation. The Auditor must advise Procurement and Capital Works as soon as is reasonably practicable after it has taken a decision to suspend an Audit, including providing the reasons for the suspension.

- 6.20 Where an Audit has been suspended, the Territory will arrange for a new Audit to be conducted as soon as reasonably practicable having regard to safety concerns identified by the Auditor, WorkSafe ACT or other WHS regulator.

7 Liability for cost of Auditors

Initial Audit

- 7.1 The cost of Auditors for the conduct of Initial Audits will be paid for by the Territory.

Follow Up Audit

- 7.2 Where a Follow Up Audit is required as a result of the action or inaction of the Prequalified Contractor (including any failure to comply with any part of this Policy), the Prequalified Contractor will be liable to reimburse the Territory for the costs of the Auditor incurred in conducting the Follow Up Audit. The Auditor will advise the Territory where it believes the need for a Follow Up Audit arises given the action or inaction of the Prequalified Contractor. Those costs will be paid (or otherwise recovered) as provided for in section 4.13 of this Policy. Where the Follow Up Audit required for reasons other than the action or inaction of the Prequalified Contractor, the Territory will be responsible for paying the costs of the Auditor incurred in the conduct of the Follow Up Audit.

Close Out Audit

- 7.3 The Auditor's costs incurred in conduct of any Close Out Audit referable to any Initial Audit, unless the Territory otherwise agrees, will be paid by the Prequalified Contractor to the Territory by way of reimbursement. Where those costs are to be paid by the Prequalified Contractor they will be paid or otherwise recovered as provided for in section 4.13 of this Policy.

8 Allocation of Points

- 8.1 Following review of the Auditor's interim report (referable to an Initial Audit or Follow Up Audit, as applicable) Procurement and Capital Works will determine the Initial Points to be applied to reviewed and accepted WHS Non-conformances as follows:

Type of WHS Non-conformance	Initial Points
Major Non-conformance	50 Points
Moderate Non-conformance	10 Points
Minor Non-conformance	5 Points

WHS Active Certification Policy

- 8.2 The Initial Points will be notified by Procurement and Capital Works to the Prequalified Contractor following review of the report prepared by the Auditor referable to the Initial Audit and/or Follow Up Audit(s).
- 8.3 Following receipt and review of the Auditor’s report referable to the Close Out Audit, Procurement and Capital Works will allocate Final Points against those WHS Non-conformances which have been rectified or mitigated to the satisfaction of Procurement and Capital Works as follows:

Type of WHS Non-conformance	Final Points – rectification or mitigation has occurred to satisfaction of Territory
Major Non-conformance	25 Points
Moderate Non-conformance	5 Points
Minor Non-conformance	2 Points

- 8.4 Where Procurement and Capital Works finds that the Prequalified Contractor has failed to rectify or mitigate the WHS Non-conformance to its satisfaction, the Initial Points allocated to that WHS Non-conformance may, at the discretion of the Territory, be doubled and become the Final Points allocated to the Prequalified Contractor. The following table sets out the Points to be allocated in those circumstances. In deciding if the Points are to be doubled the Territory may take into consideration any matters it considers appropriate, including any comments of the Auditor and any actions taken by the Prequalified Contractor in its attempt to rectify or mitigate the WHS Non-conformance. In the event a decision is made by the Territory not to allocate double Points, the Initial Points allocated for the WHS Non-conformance will become the Final Points allocated to the Prequalified Contractor.

Type of WHS Non-conformance	Final Points – rectification or mitigation cannot occur or has not occurred to satisfaction of Territory and Territory decides to double the Points
Major Non-conformance	100 Points
Moderate Non-conformance	20 Points
Minor Non-conformance	10 Points

WHS Active Certification Policy

- 8.5 Procurement and Capital Works will notify the Prequalified Contractor of the allocation of Final Points in writing.
- 8.6 Where, following the allocation of Final Points against the Prequalified Contractor, the total of the Final Points equals or exceeds 100 Points the Territory shall take steps to cancel the prequalification of the Prequalified Contractor as provided for in the relevant Prequalification Scheme.
- 8.7 Points will only be allocated against a Prequalified Contractor when they are Final Points, subject to the following exception. Where, following the determination of Initial Points, the total Points referable to a Prequalified Contractor including those Initial Points exceeds 100 Points, and following any Close Out Audit it would not be possible for the total Points allocated to the Prequalified Contractor to fall below 100, the Initial Points will immediately be allocated to the Prequalified Contractor as Final Points and the Territory shall take steps to cancel the prequalification of the Prequalified Contractor as provided for in the relevant Prequalification Scheme.

Duration of Points

- 8.8 Final Points will be allocated to a Prequalified Contractor for a period of two (2) years from the date of the Initial Audit (or, if applicable, the Follow Up Audit) at which time the WHS Non-conformance referable to the allocated Final Points was first identified. Final Points allocated to a Prequalified Contractor will be attributed to that Prequalified Contractor at the time they seek to renew, upgrade or apply for prequalification status under any Prequalification Scheme.
- 8.9 In deciding what Points will be notified or allocated under the Policy, Procurement and Capital Works will have regard to the need for consistent implementation of the Policy.

9 Steps taken to cancel prequalification status

- 9.1 Where steps are taken to cancel a Prequalified Contractor's prequalification status under a Prequalification Scheme on the basis they have been allocated 100 or more Final Points (subject to section 8.6), and the prequalification is so cancelled, the former Prequalified Contractor will not be permitted to apply for prequalification under any Prequalification Scheme for a minimum period of six (6) months.
- 9.2 The former Prequalified Contractor will be required to satisfy all assessment criteria including criteria regarding work health and safety performance as part of its new application for prequalification.
- 9.3 Where a Prequalified Contractor's prequalification under any Prequalification Scheme has been cancelled as a result of attaining 100 Final Points or more (whether this is the sole reason or one of a number of reasons for cancellation), and the contractor subsequently seeks to reapply for prequalification under a Prequalification Scheme, the following process will apply. Where the former Prequalified Contractor's prequalification is granted, it will be allocated commencing Final Points being the lesser of:

WHS Active Certification Policy

- 1) 80 Final Points (if the total number of Final Points subsisting at the time prequalification is granted is 80 Final Points or more), with those 80 Points to be made up of the most recently allocated Final Points for the contractor (*see example below); and
- 2) the total of the Final Points which would have been allocated to the contractor had it remained prequalified.

Section 8.8 will apply in respect of any Final Points allocated at the time application for prequalification is granted. That is the Points will apply, and age, as if the contractor had remained prequalified.

*Example for purpose of section 9.3(1) – contractor is allocated 90 Points on 1 September 2013 and 50 Points on 1 June 2014 resulting in its prequalification being cancelled effective 1 June 2014. The contractor reapplies for prequalification on 1 January 2015. If they are successful they will be allocated 80 Points as follows: the 50 Points originally allocated on 1 June 2014, which will expire on 31 May 2016 and 30 Points (being the balance of the Points originally allocated on 1 September 2013, which will expire on 31 August 2015).

- 9.4 Where a contractor's prequalification under a Prequalification Scheme is cancelled for a reason or reasons other than having attained 100 Final Points or more the Final Points allocated to that contractor at the time its prequalification was cancelled will be carried over (provided they remain current – see section 8.8) and allocated to the contractor as part of its new prequalification. That is, the Points will apply and age as if the contractor had remained prequalified.

10 Appeals

- 10.1 If a Prequalified Contractor (or former Prequalified Contractor) is dissatisfied with a decision of the Territory under this Policy an appeal may be made in accordance with the following procedure.
- 10.2 The appeal must be in writing.
- 10.3 The appeal must be lodged with the Executive Director, Procurement and Capital Works within ten (10) Business days of the date of the correspondence notifying the appellant of the decision.
- 10.4 The appellant must include all reasons and other supporting documentation it seeks to rely on for its appeal.
- 10.5 Upon receipt of the written appeal, the Executive Director, Procurement and Capital Works will appoint an independent WHS specialist (for example a member of the Safety Institute of Australia) (**Appeal Investigator**), to investigate the appeal.
- 10.6 The appeal investigator will not have participated in the decision making process which is the subject of appeal.
- 10.7 Following completion of the investigation, the Appeal Investigator will make a recommendation to the Executive Director, Procurement and Capital Works, whose decision will be final.

WHS Active Certification Policy

10.8 Each party will bear their own costs of the appeal.

11 Database

11.1 Any reports, notifications and other documents prepared for the purpose of this Policy will be held on a database maintained by the Territory. That database may be accessed and considered by the Territory as part of considering the work health and safety performance of the Prequalified Contractor. The database may include other material referable to the Prequalified Contractor's work health and safety record including performance reports on Construction Projects, referees' reports, and information about WorkSafe ACT notifications referable to sites controlled by the Prequalified Contractor and generally.

11.2 The database will contain details of Final Points allocated to a Prequalified Contractor. It may contain details of Initial Points and other processes being conducted under the Policy.

11.3 The database may be used by the Territory to inform reports on WHS matters and for any other matters, at its absolute discretion.

12 Definitions and Interpretation

12.1 The following definitions apply in the Policy:

Term	Definition
Active Certification Policy or WHS Active Certification Policy or Policy	This policy.
Audit	Any of the following: an Initial Audit, a Follow Up Audit, a Close Out Audit or any other form of audit provided for under this Policy.
Auditor	An auditor approved by the Territory to conduct Audits.
Business days	Any day other than a Saturday, Sunday, public holiday in the Australian Capital Territory or 26, 27, 28, 29, 30 or 31 December.
Close Out Audit	A final audit in an audit cycle at which the Auditor determines whether the Prequalified Contractor has rectified or mitigated WHS Non-conformances identified in an Initial Audit and/ or Follow Up Audit(s).
Construction Project	Any project of the Territory involving Construction Work the value of which is or exceeds \$250,000 (exclusive of GST).
Construction Work	See section 289 of the WHS Regulation for definition.
Cyclical Audit	See Part 4 of the Policy.

WHS Active Certification Policy

Term	Definition
Final Points	The final points to be allocated to a Prequalified Contractor for a WHS Non-conformance following completion of an audit process (or as otherwise provided in this Policy).
Follow Up Audit	An additional audit or audits (other than a Close Out Audit) requested by an Auditor. The Follow Up Audit may occur after an Initial Audit or failed Initial Audit.
GST	Has the same meaning as in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Initial Audit	A first audit in an audit cycle.
Initial Points	The Initial Points determined by Procurement and Capital Works to be applied to reviewed and accepted WHS Non-conformances following an Initial Audit or Follow Up Audit.
Major Non-conformance	A person is actually exposed to hazards or workplace activities likely to cause death or serious injury (see Attachment A for examples).
Minor Non-conformance	Contravention of an administrative requirement, for example, work plans, inductions, record keeping systems etc (see Attachment A for examples).
Moderate Non-conformance	Persons actually or potentially exposed to hazards or workplace activities likely to cause other than death or serious injury <i>or</i> persons potentially exposed to hazards or workplace activities likely to cause death or injury (see Attachment A for examples).
Multi Site Construction Project	A Construction Project that is undertaken across multiple sites and is not necessarily the subject of activity across a full term. For example, intermittent work across multiple sites such as line marking roads, works relating to footpaths, light poles, traffic lights or tree planting.
Non-conformance	A judgement made by an Auditor that the audit evidence does not fulfil the specified requirements of the audit criterion. In a system sense it is the absence of, or failure to implement and maintain, one or more required system elements. It is a situation which would, on the basis of audit evidence, raise significant doubt as to the capability of the management system for work health and safety matters (including the WHS Management Plan) to provide a safe and healthy working environment, or to achieve the OHS policy and objectives of the Prequalified Contractor.
OHS	Occupational health and safety.
Other Contractors	Any subcontractors, sub-subcontractors, suppliers, consultants and subconsultants working on Construction Projects, (including each of those entities' employees).

WHS Active Certification Policy

Term	Definition
Points	Initial Points and/or Final Points.
Prequalified Contractor	Any contractor prequalified under a Prequalification Scheme.
Prequalification Scheme	Any and all of the following: <ol style="list-style-type: none"> (1) the National Prequalification System for Civil (Road and Bridge) Construction Contracts, (2) the National Prequalification System for Non Residential Building (\geq\$50 million); (3) the Territory Prequalification Scheme for Construction Industry Contractors; and (4) any other prequalification scheme administered by the Territory for contractors performing any form of Construction Work, from time to time (which, for the avoidance of doubt, includes any scheme to prequalify project managers overseeing the delivery of construction work).
Principal Contractor	Has the same meaning as set out in the WHS Regulation.
Procurement and Capital Works	Procurement and Capital Works being part of the Chief Minister, Treasury and Economic Development directorate or such substituted agency of the Territory with responsibility for the procurement associated with Construction Projects of the Territory from time to time.
Sanction	The downgrading, cancellation, suspension or other permitted action under a Prequalification Scheme in respect of a Prequalified Contractor's prequalification status.
Superintendent	Any Superintendent, contract administrator, principal's authorised person or other person appointed by the Territory to administer a contract.
Territory	<ol style="list-style-type: none"> (1) If used in a geographical sense means the Australian Capital Territory; and (2) If used in any other sense means: <ol style="list-style-type: none"> i. the Australian Capital Territory established by the <i>Australian Capital Territory (Self-Government) Act 1988 (Cth)</i>; and ii. any Territory entity under the <i>Auditor-General Act 1996 (ACT)</i> excluding: the University of Canberra; a Territory-owned corporation or another entity established under the <i>Corporations Act 2001 (Cth)</i>.
WHS	work health and safety.
WHS Act	<i>Work Health and Safety Act 2011 (ACT)</i> .

WHS Active Certification Policy

Term	Definition
WHS Legislation	<p>“WHS Legislation” means:</p> <ul style="list-style-type: none"> (1) the <i>Work Health and Safety Act 2011</i> (ACT); (2) the <i>Work Health and Safety Regulation 2011</i> (ACT); (3) all instruments issued under the <i>Work Health and Safety Act 2011</i> or the <i>Work Health and Safety Regulation 2011</i>; (4) all laws that replace the above laws; and (5) all other laws applicable in the Australian Capital Territory dealing with work health and safety matters.
WHS Management Plan	Means the definition of “WHS Management Plan” in the contract with Prequalified Contractor for the Construction Project, but if no definition exists in the contract see section 309 of the WHS Regulation.
WHS Non-conformance	Any Major Non-conformance, Moderate Non-conformance or Minor Non-conformance identified by an Auditor.
WHS Regulation	<i>Work Health and Safety Regulation 2011</i> (ACT).

12.2 Other words and phrases may be defined internally in the Policy.

12.3 The words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation".



ACT
Government

Commerce and Works

POINT SANCTION CLASSIFICATIONS

Major = 50 Points

A hazard or workplace activity that is likely to cause death, serious injury or serious illness;

High risk construction work (as defined in Section 291 of the Work Health and Safety Regulation 2011 and explained in Chapter 1 of the Work Health and Safety (Construction Work) Code of Practice)

High risk construction work means construction work that -

1. involves a risk of a person falling more than 2m; or
2. is carried out on a telecommunication tower; or
3. involves demolition of an element of a structure that is load bearing or otherwise related to the physical integrity of the structure; or
4. involves, or is likely to involve, the disturbance of asbestos; or
5. involves structural alterations or repairs that require temporary support to prevent collapse; or
6. is carried out in or near a confined space; or
7. is carried out in or near -
 - a shaft or trench with an excavated depth greater than 1.5m; or
 - a tunnel; or
8. involves the use of explosives; or
9. is carried out on or near pressurised gas distribution mains or piping; or
10. is carried out on or near chemical, fuel or refrigerant lines; or
11. is carried out on or near energised electrical installations or services; or
12. is carried out in an area that may have a contaminated or flammable atmosphere;
or
13. involves tilt up or precast concrete; or
14. is carried out on, in or adjacent to a road, railway, shipping lane or other traffic corridor that is in use by traffic other than pedestrians; or
15. is carried out in an area at a workplace in which there is any movement of powered mobile plant; or

16. is carried out in an area in which there are artificial extremes of temperature; or
17. is carried out in or near water or other liquid that involves a risk of drowning; or
18. involves diving work.
19. non- reporting of notifiable incidents.
20. concealment of notifiable incidents.

Moderate = 10 points

A hazard or workplace activity likely to cause other than death, serious injury or serious illness;

Examples, but not limited to:

Testing of the emergency evacuation procedures
Poor site security
No supervision of work through task observation
Failure to have a Safety Committee

Minor = 5 points

The contravention of administrative requirements

Examples, but not limited to:

Record keeping systems
Check list not completed
Any administrative control of the management system